SUPREME COURT, U.S.
FILED

No. (1) 01091 JAN 2 2001

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In the

Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

EDWARD CARLSON,

Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether an anonymous caller's tip, that a possibly armed and suicidal person is at a specific public location, constitutes a sufficiently dangerous situation so as to permit a peace officer to make a temporary investigatory stop without a showing of reliability.

Whether an anonymous caller's tip, whose content provides specific details that severely narrow the possible class of callers, provides a lawful basis for peace officers to act on that tip.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, the State of Illinois, prays for a Writ of Certiorari to review the judgment and order of the Illinois Appellate Court, First Judicial District, Second Division, which was entered on May 9, 2000.

OPINION BELOW

The opinion of the Illinois Appellate Court, First Judicial District, Second Division, which suppressed the evidence and reversed respondent's conviction, was entered on May 9, 2000 and is reported at 313 Ill.App.3d 447, 729 N.E.2d 858 and reproduced in Appendix A of this Petition.

The order of the Supreme Court of Illinois denying leave to appeal, entered on October 4, 2000, is not reported and is reproduced in Appendix B of this Petition.

The order of the circuit court denying respondent's motion to suppress is unreported.

STATEMENT OF JURISDICTION

The order and judgment of the Illinois Appellate Court, First Judicial District, Second Division, was entered on May 9, 2000. No Petition for Rehearing was filed. On October 4, 2000, the Illinois Supreme Court denied a Petition for Leave to Appeal. This Petition for a Writ of Certiorari is filed within 90 days of that order as required by Rule 13(1) of the Rules of the Supreme Court. The decision of the Illinois Appellate Court, First Judicial District, Second Division, was explicitly based on federal Constitutional law, in particular on the

Fourth Amendment. Accordingly, the jurisdiction of this Court is invoked under 28 U.S.C. sec. 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

STATEMENT OF THE CASE

Respondent, Edward Carlson, was charged with one count of Unlawful Use of Weapon under Information Number 99-C3-30061. (C.L. 31-32) Respondent filed a pre-trial Motion to Quash Arrest and Suppress Evidence and a hearing was held on this motion on December 3, 1998. (R. V1-1, C.L. 25-26)

Motion to Suppress

Two witnesses were called upon to testify at the suppression hearing, the respondent and Officer Brad Hollister. (V1-8, 20) Their versions of the events leading up to respondent's seizure were essentially the same. (V1-36, 37) Around midnight of October 11, 1998, the police received a call on their 911 dispatch line that a possibly suicidal person was on the pay phone outside

of the Gold Eagle Liquor Store at 725 Golf Road in Hoffman Estates. (V1-21, 24) The caller gave a brief description of this person, including his name (Edward), and said that he may have a gun in his possession or in his car. (V1-21, 22) In response, Officer Hollister drove to that location and saw a person, who matched the description, speaking with someone on the pay phone next to the closed liquor store. (V1-22, 25) Officer Hollister identified himself, exited his car, pointed his weapon at this person "for my personal safety as well as others" and asked him if his name was Edward. (V1-22, 26) When the respondent acknowledged that he was Edward, Officer Hollister asked him to lie prone on the ground. (V1-22) Officer Hollister then asked respondent if he had a weapon in his possession. (V1-23) Respondent said that he did not have a weapon on him but he did have one in the car. (V1-23) The respondent was then handcuffed and a subsequent search revealed a gun in the car as well as a small quantity of marijuana and a cannabis pipe on respondent's person. (V1-13, 23)

After both sides rested their case and presented their arguments, the trial judge found the testimony of both the officer and the respondent to be credible. (V1-36, 37) The trial judge ruled that, given the circumstances presented, the officer's conduct was appropriate because:

> "[h]e has to be concerned about his safety and the safety of the defendant and anyone else that may be in the area. Under those circumstances, he had a right to confine the defendant. There were certainly reasonable articulable circumstances which raised the situation to at least a suspicion. It gave him a basis to investigate the

> matter and he took the steps that he took. . . . Under all of those facts, I find that the police conduct was reasonable. The defendant's rights were not violated." (V1-37, 38)

Accordingly, having found that respondent was properly subjected to a temporary investigative seizure, the trial judge denied defendant's motion to suppress. (V1-39)

Trial

After the denial of respondent's suppression motion, a bench trial commenced on April 19, 1999. (V2-2) The testimony of the two witnesses, Officers Hollister and Sullivan, substantially paralleled the evidence from the suppression hearing. Officer Hollister added that the 911 dispatcher "had received a call of a subject talking on a pay phone who was talking to his girlfriend, telling her he was thinking about. . . . killing himself, committing suicide." (V2-12) Officer Sullivan added that, inside the respondent's car, he recovered a .22 caliber semiautomatic pistol, with one bullet in the chamber and three bullets in the clip, and one box of .22 caliber bullets. (V2-31, 32, 27) Finally, Officer Hollister testified that, because of the suicide call, the fire department paramedics were dispatched and "staged" nearby until it was safe for them to come in and transport the respondent to the Hoffman Estates Medical Center Hospital. (V2-27) After hearing all the evidence, the trial judge found the respondent guilty of unlawful use of weapon and sentenced him to 12 months of conditional discharge.

Appeal

Following his conviction, the respondent appealed to the Illinois Appellate Court. (C.L. 62) After all briefs had been filed and oral arguments heard, the appellate court granted leave to Petitioner to cite additional authority and analyze the present issue as a temporary investigative stop conducted pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968). (Supp. C.L. 2-4) Later, while the case was still pending, this Court rendered its decision in *Florida v. J.L.*, 529 U.S. 266 (2000). In light of this, the Illinois Appellate Court "asked the parties to comment on the effect of that decision on this case." (App. 2) Both parties complied with the appellate court's request and filed supplemental arguments analyzing the respondent's temporary seizure in the instant case in light of *Florida v. J.L.* (Supp. C.L. 16-24) On May 9, 2000, the Illinois Appellate Court issued its opinion and, relying solely on the Court's decision in *Florida v. J.L.*, suppressed the evidence and reversed respondent's conviction.

REASONS FOR GRANTING THE WRIT

I.

THE PRESENT ISSUES HAVE BEEN SPECIFICALLY LEFT OPEN BY THIS COURT IN *FLORIDA v. J.L.*

The instant case presents this Court with the perfect opportunity to address two questions that it posed and left open in *Florida v. J.L.*, 529 U.S. ___ (2000). First, in *Florida v. J.L.*, Justice Ginsburg, writing for the Court, acknowledged that ". . . the danger alleged in an anonymous tip might be so great as to justify a search

without a showing of reliability. . ." but noted that "[t]he facts of this case do not require us to speculate about the[se] circumstances. . ." 529 U.S. at ___. The case at bar, unlike *Florida v. J.L.*, squarely presents this Court with these circumstances. Specifically, a midnight telephone tip that a possibly armed and suicidal person is speaking on a public pay phone next to a liquor store. Thus, the facts in the present case will enable this Court to reach the question regarding which anonymous tips describe circumstances so inherently dangerous that they demand immediate police action without a showing of reliability.

Second, in the concurring opinion, Justice Kennedy noted the following:

> It seems appropriate to observe that a tip might be anonymous in some sense yet have certain other features, either supporting reliability or narrowing the likely class of informants, so that the tip does provide the lawful basis for some police action. One such feature, as the Court recognizes, is that the tip predicts future conduct of the alleged criminal. There may be others. . . . These matters, of course, must await discussion in other cases, where the issues are presented by the record. 529 U.S. at ___.

The record in the case at bar squarely presents the Court with this precise issue. Here, the police received an anonymous caller's tip that a person by the name of Edward, who may have a gun on his person or in his car, was speaking to his girlfriend from a public pay phone at a specific location and "telling her he was thinking about. . . . killing himself, committing suicide." (V2-12) As the Illinois Appellate Court acknowledged,

the nature of the information provided by this call greatly narrowed the likely class of callers to a roommate of respondent's girlfriend or someone who was privy to the conversation. (App. 4) Had the caller's information been false, the police could have easily discovered the caller's identify through a simple investigation. (This is the exact opposite of *Florida v. J.L.* where any person walking or driving down the street could have given the bare-boned tip about J.L.). Therefore, the present case provides this Court with the perfect vehicle to address itself to the question of whether the police can lawfully act when the information provided by an anonymous tip narrows the likely class of informants.

II.

THE ILLINOIS APPELLATE COURT'S OPINION CONCERNS IMPORTANT QUESTIONS OF FEDERAL CONSTITUTIONAL LAW WHICH SHOULD BE DECIDED BY THIS COURT TO GIVE NEEDED GUIDANCE TO LOWER COURTS AND LAW ENFORCEMENT OFFICIALS THROUGHOUT OUR NATION.

Every day, law enforcement officials throughout our country receive anonymous telephone tips concerning individuals in public places that are contemplating suicide. Frequently, these calls also indicate that the suicidal subject may be armed. When such situations arise, it is important for law enforcement officials to know what quantum and nature of information is required before they can act. For the following reasons, as well as those in Section I, *supra*, the present case affords this Court an ideal opportunity to visit and answer this important question.

First, in basing its decision solely on *Florida v. J.L.*, it is beyond question that the Illinois Appellate Court decided the present case under federal Constitutional law. (App. 1) *See Michigan v. Chesternut*, 486 U.S. at 571, n.3. Second, in *Florida v. J.L.*, this Court noted that "[w]e speak in today's decision only of cases in which the officers' authority to make the initial *stop* is at issue." 529 U.S. at ___. (Emphasis added) Similarly, in the case at bar, the Illinois Appellate Court, in the first sentence of its opinion, limited its ruling to the propriety of the initial seizure (stop) of the respondent. (App. 1) Third, the facts leading up to the stop of the respondent are essentially undisputed, thus permitting *de novo* review by this Court. *See Ornelas v. United States*, 517 U.S. 690 (1996). Fourth, the case at bar raises significant public safety considerations. For example, in making his ruling at the suppression hearing, the trial judge twice stated that the officer's actions were proper because, *inter alia*, they were necessary "for the safety of the defendant." (V1-37, 38) Thus, the trial judge's ruling reflected the fact that the primary purpose for the officer's actions was to prevent the respondent from killing himself. In other words, by stopping and disarming a possibly suicidal person, the officer was primarily on a life saving/public safety mission rather than a criminal evidence gathering mission. *See City of Indianapolis v. Edmonds*, ___ U.S. ___, 121 S.Ct. 447 (2000). Fifth, Professor Wayne R. LaFave has discussed the issue at bar and stated the following:

> It must be recognized that stoppings for investigation are not all of one kind and that in some instances the need for immediate action may be so great that substantial doubts about

> the reliability of the informant or his information cannot be permitted to stand in the way of prompt police action.

4 Wayne R. LaFave, *Search and Seizure*, sec. 9.4(h) at 229 (3rd Ed. 1996). Sixth, the instant case requires this Court's immediate attention because any delay in resolving the present issues will only yield more erroneous decisions such as the present one and that in *Rivera v. Florida*, ___ So.2d ___, 2000 Fla. App. Lexis 14597, 25 Fla. Law W.D. 2609 (Nov. 8, 2000) (Court holds that report by unidentified motorist to police that he had just witnessed a gun battle in a public area between occupants of two different cars held to be insufficiently dangerous to justify an investigative stop of these vehicles.)

Finally, the present case merits this Court's attention because, as matters now stand in Illinois, when a peace officer responds to the scene of a possibly armed and suicidal person, he finds himself in a most unenviable position. He may either stand helplessly by and hope that the suspect does not kill himself before the officer can detect some fact that will permit him to seize the suspect, or he may attempt to make a consensual encounter and hope that the suicidal suspect, who has nothing to lose, does not decide to take the officer with him. In light of this, the Petitioner implores the Court to grant the instant petition and rectify this untenable state of affairs.

CONCLUSION

For all the foregoing reasons, the Petitioner respectfully prays that this Honorable Court grant the instant petition for Writ of Certiorari to review the judgment of the Illinois Appellate Court, First District, Second Division.

Respectfully submitted,

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APPENDIX A

[Entered May 9, 2000]

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

No. 1-99-1660

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
	)	
v.	)	Honorable NICHOLAS PAMARO and
	)	
	)	
EDWARD CARLSON,	)	JOHN J. SCOTILLO,
	)	Judges Presiding.
Defendant-Appellant.	)	

JUSTICE McNULTY delivered the opinion of the court:

In this case we must determine whether the prosecution presented sufficient evidence to justify the seizure of the defendant. We find that a recent decision of the United States Supreme Court controls the resolution of this issue. Following *Florida v. J.L.*, 529 U.S. 266, 146 L.Ed.2d 254, 120 S.Ct. 1375 (2000), we hold that the evidence derived from the seizure must be suppressed and the conviction reversed.

Sergeant Brad Hollister arrested Edward Carlson around midnight on October 11, 1998, charging him with unlawful use of a weapon. At the hearing on defendant's motion to quash the arrest, Hollister said that

"[t]here was a call to our 911 dispatch of a possible suicidal subject on the pay phone" at a specified location. Hollister added that the dispatcher briefly described the subject, named Edward, and said he might have a gun. When Hollister arrived at the specified location, he saw defendant talking on a pay phone. Hollister testified:

> "I identified myself, got out of my car. I asked the subject if his name was Edward. He replied yes. I had my weapon pointed at him for my safety for the possibility he had a weapon. And I asked him to lie prone on the ground."

Hollister then asked if defendant had a weapon. Defendant said he did not have one on him, but he had one in his car. Backup officers took defendant's keys and found a gun under the front seat of the car the keys opened.

Defendant's testimony effectively corroborated Hollister's testimony. The court found both witnesses credible and held that Hollister acted reasonably under the circumstances. On that basis the court denied the motion to quash the arrest and suppress evidence seized at the time of the arrest.

At the bench trial Hollister added that the dispatcher said the subject "was talking to his girlfriend" on the payphone. The court found defendant guilty of unlawful use of a weapon and sentenced him to 12 months of conditional discharge.

After oral argument on appeal, the Supreme Court decided *J.L.*. We asked the parties to comment on the effect of that decision on this case. In *J.L.* someone called the police and told them a young black man, at a specified location and wearing a plaid shirt, had a gun. Officers went to the scene where they found a

young black man wearing a plaid shirt. Although the man made no threatening or suspicious movements, police frisked him and seized a gun. The prosecution charged him with unlawful possession of a firearm. The trial court granted the defendant's motion to quash. The Supreme Court affirmed, finding that the evidence did not show sufficient indicia of reliability to justify the stop and frisk. The Court explained:

> "[T]he officers' suspicion that J.L. was carrying a weapon arose not from any observations of their own but solely from a call made from an unknown location by an unknown caller. * * *
>
> * * * The anonymous call * * * provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility. That the allegation about the gun turned out to be correct does not suggest that the officers, prior to the frisks, had a reasonable basis for suspecting [the defendant] of engaging in unlawful conduct * * *. * * * * * *
>
> An accurate description of a subject's readily observable location and appearance is of course reliable in this limited sense: It will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity. The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." *J.L.*, 529 U.S. at ___, 146 L.Ed.2d at 260-61, 120 S.Ct. at 1378-79.

The concurrence emphasized that the "record [did] not show whether some notation or other documentation of the call was made either by a voice recording or tracing

the call to a telephone number." *J.L.*, 529 U.S. at ___, 146 L.Ed.2d at 263, 120 S.Ct. at 1381 (Kennedy, J., concurring).

Here, too, the prosecution failed to present evidence of sufficient indicia of reliability to justify the stop and frisk. The record includes no evidence that the police knew the identity of the caller or whether the police could find the caller's phone number or address.

The prosecution contends that the call was not anonymous because Hollister reported that the dispatcher said the defendant's girlfriend called the station. The argument mischaracterizes the record. Hollister said nothing at all about the caller or even whether the dispatcher told him who called. Hollister said only that the dispatcher reported that the subject was talking to his girlfriend on the pay phone. Even if we assume the dispatcher told Hollister the truth and the caller had reason to say defendant was talking to his girlfriend, the evidence permits the inference that a roommate or any other person who knew the putative girlfriend could have made the call. The evidence does not show the caller could in any way be found again or held accountable if the information proved to be false. In this case, as in *J.L.*, the prosecution did not present evidence of tracing the call or a tape recording of the call or any other evidence to distinguish the call here from an anonymous tip.

The prosecution also argues that, in this case, unlike *J.L.*, the police did not seize defendant until they confirmed that he had a gun.

> "[A] seizure of a person * * * occurs the moment a person's freedom to walk away from a policeman is restrained, even though a restraint falls

> short of an arrest. [Citation.] Restraint can be deduced from a showing of actual or threatened force on the part of the police officers." *People v. Mills*, 115 Ill. App. 3d 809, 813, 450 N.E.2d 935 (1983).

Hollister made a threat of force by drawing his gun as he first approached defendant. He asked only if defendant's name was Edward before ordering defendant to lie on the ground. At this point the State had seized Edward, at least to the extent of stopping him for questioning and searching him for weapons. As in *J.L.*, defendant here was not doing or saying anything suspicious or threatening. Based solely on the information from the dispatcher, Hollister pointed a gun at defendant and ordered him to lie on the ground. Under *J.L.*, the evidence cannot justify the seizure. See also *People v. Lawson*, 298 Ill. App. 3d 997, 700 N.E.2d 125 (1998).

The prosecution presented neither the tape nor the dispatcher nor any other admissible evidence to prove that an accountable person called the police. The anonymous tip lacked sufficient indicia of reliability to justify the seizure of defendant. The trial court should have quashed the stop and suppressed any evidence then obtained. Without the evidence obtained following the investigatory stop, the prosecution had no proof that defendant used a weapon unlawfully. Accordingly, the judgment of the trial court must be reversed.

Reversed.

COUSINS, P.J., and McBRIDE, J., concur.

APPENDIX B

(Letterhead of)

SUPREME COURT OF ILLINOIS
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October 4, 2000

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No. 89676 — People State of Illinois, petitioner, v. Edward Carlson, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for Leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 26, 2000.